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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

GARLAND RABON,

Defendant.

**Case No.:** 4:23-CR-00191-AMO-3

**DEFENDANT GARLAND RABON'S  
MEMORANDUM IN SUPPORT OF CAP  
ASSESSMENT REFERRAL**

**Court:** Courtroom 3, 3rd Floor

**Hearing Date:** August 4, 2025

**Hearing Time:** 2:00 p.m.

As directed by the Court, Garland Rabon submits this brief concerning his request for a full Convictions Alternatives Program (“CAP”) evaluation. Dkt. 409. On June 18, 2025, Pretrial Services informed the parties it had screened Mr. Rabon for CAP eligibility and found he met the preliminary criteria for the program. Mr. Rabon now makes a limited request: that Pretrial Services conduct a full CAP evaluation. Granting this request guarantees nothing: Pretrial Services could deem Mr. Rabon unsuitable for CAP after completing the evaluation; or if deemed suitable, the Court could still decline to refer him. All this request does is provide the Court with information from which it can exercise its 18 U.S.C. § 3553(a) sentencing discretion. *See United States v. Ruff*, 535 F.3d 999, 1003 (9th Cir. 2008) (court can consider “post-crime maturation and self-rehabilitation” at sentencing).

Because the evaluation has yet to be conducted, any government opposition to Mr. Rabon’s request cannot be based on the merits of whether he meets the CAP admission criteria.<sup>1</sup> Instead, its opposition is based solely on the crimes Mr. Rabon has been convicted of and the applicable advisory U.S. Sentencing Guidelines that will apply at sentencing. Neither disqualify Mr. Rabon from participating in CAP—as demonstrated by the numerous defendants similarly situated to him that have been sent to CAP set forth in detail below—and certainly do not disqualify him from merely being referred to Pretrial Services for an evaluation.

CAP is one of the Court’s “problem solving courts,” which are “evidence-based supervision models” that “meet the needs of participants, reduce recidivism, enhance public safety, lower costs, and improve the lives of participants, their families, and the community.”<sup>2</sup> CAP “serves defendants at higher risk of reoffending due to factors such as youth, early onset of substance abuse or delinquency, failed treatment or rehabilitation attempts, or prior felony convictions.”<sup>3</sup> Pretrial Services is tasked with “assess[ing] potential participants to confirm that they meet objective criteria for participation.”<sup>4</sup>

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<sup>1</sup> The government’s opposition is not unusual: statistics published by the Court show as of July 17, 2025, only 29% of the participants in CAP were “supported” by the U.S. Attorney’s Office. Northern District of California (“NDCA”), “Conviction Alternatives Program (CAP) Participants by Offense Category,” <https://cand.uscourts.gov/wp-content/uploads/CAP-Participant-Offense-Catagory.pdf>.

<sup>2</sup> NDCA, *Problem Solving Courts & Programs*, <https://cand.uscourts.gov/about/court-programs/problem-solving-courts-programs/>.

<sup>3</sup> NDCA, *Problem Solving Courts & Programs*, “The Problem Solving Programs,” <https://cand.uscourts.gov/about/court-programs/problem-solving-courts-programs/>.

<sup>4</sup> NDCA, *Problem Solving Courts & Programs*, “The Process for Assessment for Participation,”

1 The “assessments are not provided to the presiding judge before entry of a guilty plea,” when the  
 2 parties have not agreed to a defendant’s participation in CAP, the presiding judge may “refer[a] a  
 3 case (after entry of a guilty plea) for a full CAP assessment.”<sup>5</sup>

4 Mr. Rabon’s conviction for Hobbs Act robbery does not disqualify him from CAP, as the only  
 5 defendants ineligible for participating in problem solving courts are those “charged with sex offenses  
 6 or crimes against minors, involved in removal proceedings, or subject to an immigration detainer.”<sup>6</sup>  
 7 The U.S. Attorney’s Office has already determined a conviction for Hobbs Act robbery does not  
 8 disqualify a defendant from a referral to these problem-solving programs, and it has *agreed* to refer  
 9 other defendants convicted of armed Hobbs Act robbery to problem-solving courts.

10 In *United States v. Devaughn Sarmiento, et al.*, 4:23-CR-237-HSG, the government indicted  
 11 three defendants on seven counts of Hobbs Act robbery and one count of Hobbs Act robbery  
 12 conspiracy. 4:23-CR-237-HSG, Dkt. 1. Although only indicted on seven counts, the government  
 13 alleged, when seeking detention of the defendants, that they “agreed to, planned, and executed at least  
 14 25 armed convenience store robberies” throughout the East Bay. 4:23-CR-237-HSG, Dkt. 15. All  
 15 three defendants were released on bail and ultimately pleaded guilty to multiple counts of robbery.  
 16 4:23-CR-237-HSG, Dkt. 126, 169, 174. All defendants were referred to problem-solving courts. One  
 17 was referred to CAP. 4:23-CR-237-HSG, Dkt. 183. Another to Leading Emerging Adults to Develop  
 18 Success (“LEADS”), a program for defendants aged 18 to 26 at the time they committed their  
 19 offense. 4:23-CR-237-HSG, Dkt. 127. A third was referred to CAP Focus, a program for CAP  
 20 qualified defendants who require less intensive supervision. *See* 4:23-CR-237-HSG, Dkt. 197.  
 21 Despite recommending detention at their initial appearances, once released the government did not  
 22 seek remand after plea; it then *agreed* the defendants could participate in the District’s problem-  
 23 solving courts, as LEADS and CAP Focus require a plea agreement where the government assents to  
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 26 <https://cand.uscourts.gov/about/court-programs/problem-solving-courts-programs/>.

27 <sup>5</sup> NDCA, *Problem Solving Courts & Programs*, “The Problem Solving Programs,”  
 28 <https://cand.uscourts.gov/about/court-programs/problem-solving-courts-programs/>.

<sup>6</sup> NDCA, *Problem Solving Courts & Programs*, “Disqualifying Offenses or Factors,”  
<https://cand.uscourts.gov/about/court-programs/problem-solving-courts-programs/>.

entry into the programs.<sup>7</sup> Thus Mr. Rabon's conviction does not preclude him from a referral.

Nor does the applicable U.S. Sentencing Guidelines Mr. Rabon faces at sentencing. Defendants facing significant advisory ranges under the U.S. Sentencing Guidelines—including ranges *higher* than the one Mr. Rabon faces—have been referred to CAP.<sup>8</sup>

Name	Case #	Charges	USSG Range	Judge	Notes
B.W.	22-282	Possess drugs for sale	188-235	SI	Four firearms found at house
J.K.	23-109	Possess drugs for sale Felon in possession of firearm	87-108	WHO	
T.R.	21-178	Possess drugs for sale Felon in possession of firearm	151-188	VC	
K.T.	17-347 17-383	Distribute drugs, sell firearms w/out license, felon in possession of firearm	87-108	VC	Plead day before jury trial
J.A.	16-141	Possess drugs for sale Felon in possession of firearm	151-188	JST	Career offender
E.B.	19-704	Possess drugs for sale Felon in possession of firearm	100-125	EJD	
C.F.	17-342	Possess drugs for sale	130-162	BLF	21 criminal history points
I.F.	16-514	Possess drugs for sale Felon in possession of firearm	140-175	JST	5 guns, including AR-15 pistol
L.G.	22-460	Possess drugs for sale	188-235	HSG	Career offender
A.N.	19-612	Possess drugs for sale	135-168	EJD	
Q.N.	14-636	Felon in possession of firearm	100-125	EMC	
R.P.	19-229	Possess drugs for sale	151-188	EJD	Prior state prison sentence
T.R.	18-394	Distribute drugs Sell firearms w/out license	108-135	JST	

Mr. Rabon respectfully requests this Court refer him for a full CAP evaluation.

Dated: July 30, 2025

Respectfully submitted,

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s/ Hanni M. Fakhoury

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Attorneys for Garland Rabon

<sup>7</sup> Alternative Sentencing Programs in the Northern District of California, Agreement Among Stakeholders at 1-2, <https://cand.uscourts.gov/wp-content/uploads/Stakeholder-Agreement-for-Presentence-programs.pdf>.

<sup>8</sup> Almost every one of these defendants was convicted of distributing drugs under 21 U.S.C. § 841, a crime with a maximum punishment of at least ten years, and thus subject to the same statutory provisions concerning remand, faced by Mr. Rabon. *See* 18 U.S.C. §§ 3142(f)(1)(C), 3143(a)(2).